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UNITED STATES V. WEST: STATUTORY INTERPRETATION IS NOT CHILD’S PLAY

I. INTRODUCTION

Selling drugs is bad, but selling drugs near places where children play is really bad. This was the thought process behind federal lawmakers’ decision to enact The Comprehensive Crime Control Act of 1984 (“CCCA”).¹ One provision of the CCCA, 21 U.S.C. § 860(a) (“the playground rule”), enhances punishment for drug transactions that occur within 1000 feet of a playground.² According to the statute, a “playground” is an outdoor facility that has at least three separate apparatus “intended for the recreation of children.”³ But, what exactly is an “apparatus”? The statute does not define it and courts have struggled to determine its meaning. Most recently, the court in *U.S. v. West* interpreted the playground rule and held that Holcom Park, near where the defendant engaged in illicit drug activity, contained “three separate apparatus” necessary to constitute a “playground.”⁴

This Comment explores the shortcomings of the *West* court’s analysis. Overall, the *West* court reached the right result for the right reason despite flawed legal analysis. Criminals convicted of selling drugs near places where children gather ought to receive increased punishments because that is what Congress intended when it enacted the playground rule.

II. MAJORITY OPINION

The *West* court began its rationale by recognizing that two apparatus already existed in Holcom Park.⁵ Following the court’s recognition of two apparatus in Holcom Park, as well as a summary of the split among the federal circuit courts of appeals, the majority began its statutory analysis in an effort to decide whether fields and courts constitute a third “apparatus.”⁶

First, the Tenth Circuit began its interpretation by examining the statute’s plain language and debated whether to employ *ejusdem generis* as an interpretive aid that might assist in understanding Congress’s in-

1. Comprehensive Crime Control Act of 1984, 21 U.S.C. § 860 (2006).

2. *Id.*

3. *Id.* at § 860(e)(1) (“The term ‘playground’ means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.”).

4. *United States v. West*, 671 F.3d 1195, 1197 (10th Cir. 2012).

5. *Id.* at 1199.

6. *Id.*

tent.⁷ The majority's main concern throughout its analysis was to make sure its statutory interpretation did not defeat congressional intent.⁸ The court stated that Congress's intent in enacting the playground rule was to "create drug-free zones by increasing punishment for drug transactions that occur near places where children gather."⁹ Ultimately, the court declined application of the principle of *ejusdem generis* because it would obscure congressional intent.¹⁰ More specifically, the court agreed with the Ninth Circuit that an "application of *ejusdem generis* would narrow Congress's definition of 'children' from people 'under 18 years of age' to those young enough to be able to play on swingset[s], slides, and teeterboards."¹¹ The court explained that while many teenagers do not play on sliding boards, swingsets, or teeterboards, they are considered "children" because the definition in the statute is very clear, and to say otherwise would conflict with Congress's intent.¹² In further support of its decision, the court cited cases that reject the use of interpretive aids when they interfere with the plain language of a statute and congressional intent.¹³

Next, the court cited a statement made by then Judge Alito regarding the use of *ejusdem generis* when interpreting contracts to support its position.¹⁴ "In the analogous context of interpreting a contract . . . 'the rule of *ejusdem generis* applies only if the provision in question does not express a contrary intent.'"¹⁵ Therefore, the court ruled that the doctrine of *ejusdem generis* is inapplicable since the phrase "including, but not limited to" plainly expresses a contrary intent.¹⁶

The majority ended its opinion concluding that a baseball field with a backstop constituted an "apparatus."¹⁷ Because a baseball field with a backstop constituted an "apparatus," the majority held that Holcom Park falls under the category of a "playground" within the meaning of the playground rule since the park "is an outdoor public facility containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards."¹⁸ The majority affirmed defendant's convictions.¹⁹

7. *Id.*

8. *Id.* at 1200.

9. *Id.* (quoting *United States v. Johnson*, 1997 WL 811737, at *1 (5th Cir. Dec. 15, 1997)).

10. *Id.*

11. *Id.* (quoting *United States v. Migi*, 329 F.3d 1085, 1088 (9th Cir. 2003)).

12. *Id.*

13. *Id.* (citing *United States v. Alpers*, 338 U.S. 680, 681–82 (1950); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008)).

14. *Id.* at 1200-01.

15. *Id.* (quoting *Cooper Distrib. Co. v. Amana Refrigeration, Inc.*, 63 F.3d 262, 278 (3d Cir. 1995)).

16. *Id.* at 1201.

17. *Id.*

18. *Id.* (internal quotations omitted).

19. *Id.*

III. REASONS WHY THE MAJORITY SHOULD HAVE RULED IN FAVOR OF THE DEFENDANT

The *West* majority should have ruled in favor of the defendant because it ignored plain statutory language, introduced an ambiguous definition of “apparatus” that muddled an already murky issue, failed to take into consideration generally accepted concepts of a playground, and ignored the fact that the amenities in Holcom Park are not intended solely for the recreation of children.

First, the *West* majority should not have ignored the three specific examples of apparatus (sliding boards, swingsets, and teeterboards) included in the playground rule’s definition of “playground.”²⁰ In an effort to understand what other apparatus qualify under the statute, the majority sidetracked itself with contract interpretation, and vague dictionary definitions.²¹ It appears the majority failed to look at the three examples provided by Congress to determine which apparatus qualify. Why else would Congress include the examples? Certainly not so courts could ignore them. The majority could have easily avoided its wild goose chase to satisfy congressional intent since congressional intent is seemingly clear in the statute. Congress made an affirmative choice to include three specific examples of apparatus in its definition of “playground.”²² The inclusion of these examples strongly suggests Congress’s intent and eliminates the need for courts to extrapolate from dictionary definitions.

Second, the Tenth Circuit’s decision to rely on a dictionary’s definition of the word “apparatus” was a poor decision and created an unnecessary and convoluted detour to its holding. Definitions of words are helpful when they make the meaning of a word clear. However, the definition for the word “apparatus” adopted by the *West* court was not clear. The *West* court adopted, “a collection or set of materials, instruments, [or] appliances . . . designed for a particular use,” as the definition for the word “apparatus.”²³ This definition widened the spectrum of things that qualify as an “apparatus.”²⁴ Even the concurrence agreed that the definition did nothing to prevent a toy truck, for instance, from being included as an “apparatus,” even though it is absurd.²⁵ Again, this was not what Congress intended when it included specific examples of apparatus in the statute because the specific examples in the statute provide a context to understand the word “apparatus.”²⁶ The definition adopted by the *West* court cancelled out this context and rendered the examples meaningless.

20. 21 U.S.C. § 860(e)(1) (2006).

21. *West*, 671 F.3d at 1200-01.

22. 21 U.S.C. § 860(e)(1) (2006).

23. WEBSTER’S THIRD NEW INT’L DICTIONARY 102 (1981).

24. *Id.*

25. *West*, 671 F.3d at 1203 (Lucero, J., concurring).

26. See 21 U.S.C. § 860(e)(1) (2006). The examples include: sliding boards, swingsets, and teeterboards.

Also, Congress defined “playground,” and it defined “children,” but it did not define “apparatus.”²⁷ One reason why Congress may have decided to not define the word “apparatus” is because Congress expected courts to infer the meaning of “apparatus” from the examples listed in the statute and not to go hunting for vague definitions. The court should not have relied on a dictionary’s vague definition of “apparatus.”²⁸

Third, the majority neglected to take into consideration generally accepted concepts of a playground. The City of Lawrence Parks and Recreation Department’s website shows that parks and recreation experts do not consider Holcom Park a “playground.”²⁹ This should be a factor a court considers when it determines whether a park is a “playground” within the meaning of the playground rule. The Lawrence Parks and Recreation Department distinguishes playground equipment from other park amenities in its description of Holcom Park.³⁰ According to the website, “[t]he amenities of [Holcom Park] include: tennis courts, wall handball courts, playground equipment, sand volleyball courts, basketball court, restroom facilities, indoor recreation center, and a sports complex (baseball fields).”³¹ Notice that the list distinguishes playground equipment, from the sports complex comprised of “baseball diamonds . . . , concession area[, and an] athletic field.”³² Additionally, the officer who testified for the Government also distinguished the children’s area from the rest of Holcom Park.³³ Neither the Lawrence Parks and Recreation Department nor the officer considered the sports fields to be a similar apparatus to those in the playground area.

The last reason why the *West* majority should have ruled in favor of the defendant is because most of the amenities in Holcom Park are used by people of all ages.³⁴ Essentially, the majority ignored the phrase “apparatus intended for recreation of children,” in the playground rule’s

27. *See id.* at § 860(c).

28. Different dictionaries define the same word in different ways. For example, apparatus is defined in one dictionary as “[t]he things collectively necessary for the performance of some activity or function; the equipment used in doing something.” SHORTER OXFORD ENGLISH DICTIONARY 99 (2002). However, in a different dictionary, apparatus is defined as “[a] group or combination of instruments, machinery, tools, or materials having a particular function.” RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY 66 (1992).

29. *Holcom Park*, CITY OF LAWRENCE, KAN. PARKS AND RECREATION DEP’T, <http://www.lawrenceks.org/lprd/parks/holcompark> (last visited Oct. 4, 2012).

30. *Id.*

31. *Id.*

32. *Id.*

33.

Holcom Park is . . . a city park complex that includes . . . four baseball fields, two soccer fields, two tennis courts, . . . two handball courts, a volleyball court and a covered area for picnics and then a *children’s park area with* . . . a jungle-gym apparatus and another set of swings, and then a jungle-gym apparatus that sits next to the first one connected by a bar that you could swing across.

United States v. *West*, 671 F.3d 1195, 1196 (10th Cir. 2012) (emphasis added) (quoting the officer’s testimony).

34. CITY OF LAWRENCE, KAN. PARKS AND RECREATION DEP’T, *supra* note 29.

definition of “playground.” The primary intent of the swingset and jungle gym in Holcom Park is recreation for children.³⁵ The rest of the amenities are intended for the recreation of all ages and not just “for the recreation of children.” This suggests that the park is not just a place where children gather but a place where adults gather as well. Congress did not intend to increase punishment for selling drugs near places where people of all ages gather when it enacted the playground rule.³⁶ The majority should not have ruled that a baseball field with a backstop qualifies as an “apparatus” because a baseball field is used by people of all ages.

IV. CONCLUSION

Again, the *West* majority should have ruled in favor of the defendant because it ignored plain statutory language, introduced an ambiguous definition of “apparatus,” failed to take into consideration generally accepted concepts of a playground, and ignored the fact that the amenities in Holcom Park are not intended solely for the recreation of children. These factors seemingly suggest that the *West* court’s analysis is flawed. While the author of this Comment disagrees with the *West* court’s legal analysis, the *West* court reached the right result. Congress intended the playground rule to eliminate the presence of drugs in protected areas by discouraging transactions near places where children gather. Children undoubtedly gather at Holcom Park, and therefore, the defendant in *West* should receive an enhanced punishment for dealing drugs near the park. Despite a poorly written statute and flawed legal analysis, the Tenth Circuit reached the right result in *West*.

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35. See 21 U.S.C. § 860(e)(1) (2006) (apparatus must be “intended for the recreation of children”).

36. See *id.* Sections 841(a)(1) and 856 address the issue of selling drugs near a place where people of all ages gather.

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